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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 SHAWN ENNIS,

11 Petitioner,

12 v.

13 JEFFREY UTTECHT,

14 Respondent.

CASE NO. 3:19-CV-5786-BHS-DWC

ORDER

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16 The District Court has referred this action filed under 28 U.S.C. § 2254 to United States
17 Magistrate Judge David W. Christel. On August 26, 2019, Petitioner initiated this action
18 challenging his state court convictions and sentence. *See* Dkts. 1, 10. Respondent filed his
19 Answer on February 11, 2020. Dkt. 14. The Court has reviewed the Petition, Respondent's
20 Answer, and the state court record. *See* Dkts. 10, 14, 15.

21 In the Answer filed on February 11, 2020, Respondent argues the Petition should be
22 dismissed as unexhausted without prejudice because state remedies remain available. Dkt. 14.
23 Respondent argues Petitioner has not yet filed a petition for collateral relief, and Petitioner had
24 until March 25, 2020 to do so. Dkt. 14 at 2.

1 Since the filing of the Answer and as of the date of this order, the time to file a petition or
2 motion for post-conviction relief has passed. *See* RCW § 10.73.090 (no petition or motion for
3 collateral attack may be filed more than one year after the judgment becomes final). Based on the
4 record before the Court, it is not clear if Petitioner sought collateral review in state court before
5 March 25, 2020, or if he has now procedurally defaulted on all his claims. *See Casey v. Moore*,
6 386 F.3d 896, 920 (9th Cir. 2004); *Eisermann v. Penarosa*, 33 F.Supp.2d 1269, 1274 (D. Haw.
7 1999) (“[I]f a petitioner has never raised his federal claim to the highest state court available and
8 is now barred from doing so by a state procedural rule, exhaustion is satisfied because no state
9 remedy remains available, but the petitioner has procedurally defaulted on his claim.”).

10 Accordingly, the Court needs additional information to make a determination on the
11 Petition. The Court orders Respondent to supplement his Answer and inform the Court whether
12 Petitioner’s claims are now procedurally defaulted. Respondent’s supplemental answer must be
13 filed on or before May 1, 2020. Petitioner’s supplemental response, if any, is due May 8, 2020.
14 The Clerk is ordered to re-note the Petition for consideration on May 8, 2020.

15 Dated this 9th day of April, 2020.

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18 David W. Christel
19 United States Magistrate Judge
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